

DEPARTMENT OF HEALTH AND HUMAN SERVICES
PUBLIC HEALTH SERVICE
HEALTH RESOURCES AND SERVICES ADMINISTRATION
ROCKVILLE, MARYLAND

INDIAN HEALTH SERVICE CIRCULAR NO. 83-4

DISPOSITION OF DECEASED INDIANS AND OTHERS

Section

1. Purpose
2. Background
3. Definitions
- 4 . P o l i c y
5. References and Authorities
6. Supersession

1. Purpose. This Circular serves to revise and update the IHS policy on the IHS role in the disposition of deceased Indians and others.
2. Background. The Division of Indian Health Circular No. 64-3 (1/25/64), Burial of Indian Beneficiaries, addressed the Indian Health Service's financial and administrative responsibilities regarding the disposition of Indian patients who died in Public Health Service or contract facilities. That Circular was made obsolete, however, by the passage of P.L. 94-165, Department of the Interior and Related Agencies Appropriation Bill for F.Y. 1976, which provided for Bureau of Indian Affairs (BIA) responsibility for payment of burial costs for indigent Indians who died in IHS facilities. Prior to 1976 the Bureau of Indian Affairs had responsibility only for indigent Indians who died other than in PHS facilities. Though the BIA has contracted out their Social Service Programs (which cover such burial expenses) in some locations to various Tribes, this responsibility remains and may be handled through the tribal contractor in those cases.

Indian Health Service (IHS) Circular 69-1, Disposal of Stillborn by PHS Hospitals, established a policy on that subject, but was superseded by Transmittal Notice 72-4 (7/12/72) which transmitted the new Health Records chapter of the IH Manual. That new chapter did not refer to the disposal of the stillborn except for obtaining consents for autopsy and burial.

In the interest of clarifying the above subjects, a single policy is established here to address the IHS role in the disposition of deceased Indians.

3. Definitions

- A. Autopsy: An Autopsy includes any post-mortem examination of a body which involves a disruption of the physical integrity of that body.
- B. Body: As used herein, the term body shall include the entire physical remains of a person, fetus, or embryo.
- C. Conceptus, Products of Conception: These terms constitute a subset of "body", and include the embryo or fetus and the placenta, regardless of the degree of normal or abnormal development of those structures.
- D. Claimant: A claimant is someone who asserts their right or title to a body. The right to claim or assume responsibility for a body is covered in 4.8. As detailed in this policy, a claimant may or may not assume financial responsibility for the disposition of a body.
- E. Disposition: This term refers to the legal burial, cremation, incineration, or preservation of a body, and the activities necessary to prepare or transport a body for such treatment.
- F. Indians: Refers to those persons within the scope of the program as defined in IHS regulation (42 CFR 36.12) and IHS Manual Part 2 Chapter 1.

4. Policy.

- A. Applications: This policy refers to all deceased IHS Indians, making a distinction on the basis of age groups: (1) conception to 20 weeks gestation, and (2) greater than 20 weeks gestation, including through adulthood.

It applies to all Indians who die in IHS facilities, or who die elsewhere but whose families come to the IHS for assistance (i.e., a stillborn brought to an IHS facility from home, a patient who dies in a contract health facility and whose family requests help from the IHS with the disposition arrangements, or a person who is dead on arrival at an IHS facility). Except when a claimant is able to assume responsibility for both the financial and disposition arrangements, or these arrangements can be easily and readily handled at the Service Unit (i.e., for a less-than-20 week conceptus), the deceased's home agency BIA (tribal) office should be notified by the Service Unit Director (SUD) as soon as possible (but not later than 72 hours after the request for services has been received by II-IS) in order for the BIA (tribal) office to become involved in the case and to assist the claimant in disposition arrangements and to determine eligibility for financial assistance to cover disposition costs. (See 4.8.(2) regarding procedures in those instances when the BIA has no authority or responsibility.).

This Circular is intended to provide guidance to the IHS staffs when problems are encountered. It should not be interpreted as implying that the IHS has the primary responsibility for disposition arrangements or financing.

- B. Notification and Assumption of Responsibility: This section covers the accepted procedures involved when a claimant assumes responsibility for a body. If no such claimant is found, subsections (1) and (2) provide guidance on the steps which may be taken.

The surviving relatives or guardians of a deceased Indian, in order of inheritance, are primarily responsible for the disposal of the body and for the related expenses. The responsible relative or guardian should be notified of the death, as necessary, and should be requested to indicate in writing (or within 5 days by collect telegram, if in another locality) whether or not they wish to claim the body and, if appropriate, whether or not they wish to allow an autopsy to be performed, or organs or tissue to be removed for transplantation or research purposes.

Of primary concern is the assurance that the family is involved in the decision making process and, to the extent possible, their interests are respected. The participation of Social Workers or others skilled in working with the bereaved should be considered in these cases. In the case of an intra-family disagreement regarding the method of disposition or the assumption of responsibility, the Regional Attorney should be immediately consulted.

If a claimant cannot afford to pay for disposition expenses, the claimant is still responsible for making the disposition arrangements but alternate sources of funds may be sought, as covered in 4.8.(2). Also, if a claimant does not live within the vicinity of the beneficiary's place of death, and is unable to assume the costs of preparation and transportation of the body to a place of final disposition, alternate sources of funding should be sought, as covered in 4.8.(Z), and the body should be prepared by a local undertaker and shipped to the place where the claimant will assume custody and responsibility.

In the case of a conceptus of 20 weeks gestation or less, the claimant may request that the SUD arrange for disposal. If so, the conceptus may be incinerated unless the Tribe elects to assume responsibility for burial arrangements and expenses.

- (1) Conception to 20 Weeks Gestation: In the absence of the mother, and/or if no claimant as outlined above can be located, this should be clearly recorded, in the mother's chart if she is known, or in the SUD's files if not. The SUD then assumes legal responsibility and may arrange for the products of conception and any dissected parts to be treated as surgical specimens. There should be consideration given to Tribal sensitivities, however, and attempts made to respect their wishes. If this involves disposal procedures requiring arrangements and/or expenses more extensive than that for routine surgical specimen

disposal, such procedures should be the responsibility of the Tribe. Otherwise, surgical specimens may be dissected for study, preserved, or disposed of by cremation (incineration, as with other biological materials), as directed by the SUD in consultation with any physicians involved in the case. In the interest of not offending the sensibilities of the family or community, surgical specimens may not be disposed of in any other manner.

- (2) Greater Than 20 Weeks Gestation: In the absence of the assumption of responsibility as covered in 4.B., above, that fact should be clearly noted in the patient's chart, if available, or the SUD's files if not. In those states in which the BIA provides direct or contract services and assistance*, the BIA (tribal) official should be contacted. Should the deceased's home Service Unit not be in one of the designated states, or the BIA otherwise not assume responsibility, the Area Office should be notified and the Regional Attorney should be consulted to determine who, under local law, has the right to burial and whether state, county, or municipal governments have designated offices or procedures for assuming responsibility for disposal and its related expenses. If the aforementioned sources decline to accept responsibility, or the amount of money available from such sources is inadequate for burial costs or is particularly difficult to obtain and the Tribal government has no funds for burial expenses, the IHS shall assume responsibility for disposal in the interest of public health, pending any administrative appeals to the county, state or BIA for reimbursement. In this case, the arrangements should be made at the Service Unit level with a local undertaker, and the costs shall be borne by that Service Unit, pending any reimbursement.

- C. Consent for Autopsy: Refer to 3-6.68 and 3-3.13 M. and N. of the IH manual for policies related to autopsies and consents.
0. Coroner's Cases. Refer to 3-3.13 M(4) and 3-6.6C of the IH Manual. in cases where a death is unusual, entirely unexpected, or in which criminal or civil actions are likely to follow.

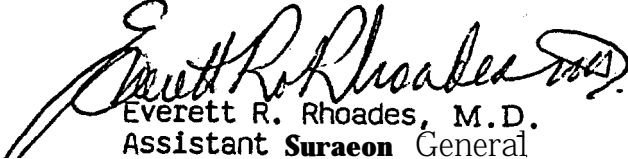
5. References and Authorities

- A. Jackson, Law of Cadavers, 161 (1950), citing Bogert v. City of Indianapolis, 13 Ind. 134, 138.
8. Public Law 94-165, Department of the Interior and Related Agencies Appropriation Bill, 1976.

*Arizona, Idaho, Maine, Minnesota (Red Lake only), Mississippi, Montana, Nebraska, Nevada, New Mexico, North Carolina, North Dakota, Oklahoma, South Dakota and Wyoming.

INDIAN HEALTH SERVICE CIRCULAR ND. 83-4

- c. Public Health Service Act 321(e), 42 U.S.C. 248(e).
- 0. Public **Health Service Regulations; 42 C.F.R. 35.16.**
- 6. Supersession. This Circular supersedes the Division of Indian Health Circular No. 64-3 (2/25/64).


Everett R. Rhoades, M.D.
Assistant **Surgeon** General
Director, **Indian Health** Service